

REMARKS

In the Office Action, claim 19 has been rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Claims 15, 18, 19, 27 and 28 were rejected under 35 U.S.C. 102(b) as being anticipated by Viart et al., U.S. Patent No. 6,682,562 ("Viart"). Claims 15-17, 20-27 and 29-32 were rejected under 35 U.S.C. 102(e) as being anticipated by Kuras, U.S. Patent No. 7,169,181 ("Kuras").

In this response, claims 15 and 23-25 have been amended, claims 16, 20 and 22 have been cancelled. In addition, paragraphs [0010] , [0011] , [0013] , [0015] , [0017] and [0032] have been amended. No new matter has been added.

Reconsideration of the application in view of the amendments and following remarks is respectfully requested.

Rejections under 35 U.S.C. §112, second paragraph:

Claim 19 has been rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Applicants have amended claim 19 to replace the term "non-positive connection" with the term "frictional connection." Applicants have also amended paragraph [0013] of the specification in a similar manner. The German-language original international application used the term "Kraftschluss" which is more appropriately translated in the context of the application as "frictional connection." No new matter has been added.

Applicants respectfully submit that the positive connection limitation of claim 15, does not conflict with the frictional connection limitation of claim 19, since it is possible to have both.

Withdrawal of the rejection to claim 19 under 35 U.S.C. §112, second paragraph, is respectfully requested.

Rejections under 35 U.S.C. §102(b):

Claims 15, 18, 19, 27 and 28 were rejected under 35 U.S.C. 102(b) as being anticipated by Viart et al., U.S. Patent No. 6,682,562.

Independent claim 15 has been amended to include the features of claims 16, 20 and 22, which claims have been cancelled.

Withdrawal of the rejections to claims 15, 18, 19, 27, and 28 under 35 U.S.C. § 102(b) is respectfully requested.

Rejections under 35 U.S.C. §102(e):

Claims 15-17, 20-27 and 29-32 were rejected under 35 U.S.C. 102(e) as being anticipated by Kuras, U.S. Patent No. 7,169,181.

Applicants have amended independent claim 15 to remove the term “positively” and to specify that two outer elements are joined to the intermediate element “in a form-fitting manner.” In addition, paragraphs [0010], [0011], [0013], [0015], [0017], and [0032] of the specification have been amended in a corresponding manner. The German-language original international application used the term “Formtschluss” or “formschlüssig” which are more appropriately translated in the context of the application as “form-fit” or “form-fitting”. No new matter has been added.

Claim 15 was also amended to include the features of claims 16, 20, and 22 and furthermore to specify that the contour is annular in addition to being concave. Support for the amendment is found in the original specification, for example at Figs. 1 and 2.

Kuras describes an artificial disk to replace a damaged spinal disc in a spinal column. The Kuras artificial disk includes upper and lower retaining members and a resilient core affixed to the upper and lower retaining members.

Applicants respectfully submit that Kuras does not describe an intervertebral disk that includes an intermediate element having an annular closed shape and two outer elements, each having an annular concave contour and joining with the intermediate element in a form-fitting manner at the contour. On the contrary, Kuras merely describes inner concave surfaces 24 and 44, but does not describe an annular contour joining form-fitting in a form-fitting manner with an annular intermediate element. Instead of a form-fit, Kuras merely describes joining of the resilient member to the upper and lower retaining members by adhesion. Column 5, lines 47-54.

Withdrawal of the rejections to claims 15-17, 20-27, and 29-32 under 35 U.S.C. §102(e) is respectfully requested.

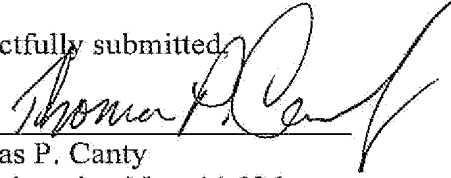
CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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Respectfully submitted,

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